

REMARKS/ARGUMENTS

Claims 1-3, 5 and 7-20 are pending in the instant application. Claims 1, 7, 8 and 12 have been amended. No new matter has been added.

I. Claim Objections

Claims 7, 8 and 12 are objected to because said claims recite "the method of claim 1". Applicant has amended the claims in accordance with the Examiner's suggestion by replacing "I" with "1".

II. Double Patenting Rejection

Claims 1-20 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-39 of copending application no. 10/813,980. Applicant respectfully disagrees. Claims 1-3, 5 and 7-20 of the present application are directed to a method of treating a target tissue site wherein a combination of electromagnetic energy treatments are delivered to different tissue depths. Claims 1-39 of 10/813,980 are directed to methods of energetically treating a target tissue site in combination with a vectored mechanical force but does not disclose a combination of electromagnetic energy treatments. Therefore, the Applicant respectfully submits that the currently pending claims of the present invention are not obvious variations of the claims of U.S. 10/813,980. As such, the Applicant requests the withdrawal of this rejection.

III. Rejections under 35 USC §102

Claims 1-3 and 7-20 stand rejected under §102(b) as being anticipated by Knowlton I (6,350,276). In response to Applicant's previous amendment to Claim 1 reciting "using an electromagnetic energy delivery device to apply a combination of energy treatments delivered to different tissue depths", the Examiner asserts that Knowlton discloses a RF delivery device and suggests that "[i]f Applicant is attempting to claim an electromagnetic device which delivers RF energy having one particular

pattern to one tissue depth and RF energy having a different particular pattern , then Applicant should explicitly do so." (page 7 of the instant final office action)

Applicant has amended claim 1, according to the Examiner's suggestion, to recite the limitation "using an energy delivery device to apply a combination of electromagnetic energy treatments delivered to different tissue depths." Applicants submit that the currently amended Claim 1 overcomes the Examiner's argument that the mechanical force or thermal energy disclosed in Knowlton I reads on the instantly claimed combination of energy treatments. Accordingly, based on the arguments above and those made previously in the Responses filed July 25, 2008 and February 13, 2008, Applicant submits that the instant claims are not anticipated by Knowlton I. Thus, Applicant respectfully requests the withdrawal of the present rejection.

IV. Rejections under 35 U.S.C. §103

Claim 5 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Knowlton (USPN 6,350,276) (Knowlton I), as applied to claim 1, and further in view of Knowlton (USPN 6,377,854)(Knowlton II).

Applicants respectfully disagree and traverse the rejection.

As discussed above, and in the previously filed Responses of July 25, 2008 and February 13, 2008, Knowlton I does not disclose each and every limitation of Claim 1, nor those claims dependent thereupon, for at least the reasons made of record. Knowlton II does not cure the deficiencies of Knowlton I; as Knowlton II does not disclose a method for treating tissue using a combination of electromagnetic energy treatments delivered to different tissue depths.

Accordingly, the instant claims are not obvious over the above-cited references. Thus, Applicants respectfully request withdrawal of the present rejection.

CONCLUSION

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If any points remain that can be resolved by telephone, the Examiner is invited to contact the undersigned at the below-given telephone number.

Please charge any fees, including fees for extension of time, or credit overpayment to Deposit Account No. **50-4634**, referencing Attorney's Docket No. **KNW-0019**.

Date: January 13, 2009

Respectfully submitted,

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